IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 1214 of 2001()

CC.282/1998 of JUDL.MAGISTRATE OF FIRST CLASS, KARUNAGAPPALLY

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REVN. PETITIONER: CW6:-

V,AJIKUMAR, S/O.VELAYUDHAN, 'SWATHI', T.C.16/1998B, GOUREESA PATTOM, PATTOM P.O., THIRUVANANTHAPURAM. (FORMERLY RESIDING AT MAEDAYIL VEEDU, VALIYASALA, THIRUVANANTHAPURAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS: ACCUSED & STATE:

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1. MAKKAN SINGH, S/O. KARANAYIL SINGH, DRIVER, ZILON VILLAGE, BUNKA TALUK (BUNKA TALUK), NAHASHAHAR DISTRICT, PUNJAB STATE.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJATH ALI FOR R2

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K. Basheer, J.

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Crl.R.P. No. 1214 of 2001

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Dated this the 30th day of November, 2007

O R D E R

This revision petition, which was filed way back in the year 2001, is directed against the judgment of acquittal of respondent No.1/accused in a case registered for offences punishable under sections 279, 337 and 304(A) IPC. The trial court acquitted the 1st respondent, since the prosecution had failed to produce CWs.1 to 3 before the court for examination. According to the trial court, the prosecution had failed to produce witnesses though several chances were given.

2. The revision petitioner who is CW6 in the case had also suffered multiple grievous injuries. According to the petitioner, the trial court ought to have examined him and the remaining witnesses even assuming presence of CWs.1 to 3 could not be procured. No reasons have been stated by the trial court as to why summons were not issued to the remaining witnesses, including the petitioner.

3. Considering the facts and circumstances of the case, I am of the view that the procedure adopted by the trial court is illegal and irregular. The trial court has vaguely referred to a decision of the Supreme Court reported in Raj Deo Sharma (II) V. State of Bihar ((1999)7 SCC 604)) while

acquitting the respondent No.1. But obviously the learned Magistrate has not considered the decision Raj Deo Sharma (II) V. State of Bihar (Supra). It is not discernible as to how the principles in the above case would be applicable in the case on hand. Obviously the trial court had overlooked the subsequent decisions on the same issue. In any view of the matter, the procedure adopted by the trial court cannot be justified.

4. It is seen that the respondent No.1/accused has not been served with notice so far. Notice has been taken out by the petitioner at the address shown in the trial court records. But it is not clear whether notice had been served on him or not. Even if respondent No.1 appears before this court, the only option available will be to remit the case back to the trial court after setting aside the judgment of acquittal. In that view of the matter, non servicing of notice on the accused is of no consequences.

5. Therefore, the judgment of acquittal in C.C.No.282/98 on the file of the Judicial Magistrate of First Class, Karunagappally is set aside. The case is remitted to the trial court for fresh disposal in accordance with law. The trial court is directed to dispose of the case as expeditiously as possible, at any rate within six months from the date of receipt of copy of this judgment.

A.K. Basheer,
Judge.

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A.K. Basheer, J.

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Crl.R.P. No. 1214 of 2001

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O R D E R

30th day of November, 2007